

OPINION
47-84

May 12, 1947 (OPINION)

SCHOOLS

RE: Tuition Foster Children

Your letter of May 8, 1947, addressed to the attorney general, has been received and referred to the undersigned for attention and reply.

You ask for the opinion of this office on the following situation: A child has been removed from his own home because of its unsuitable nature and has been placed in a foster home. The child is of school age, and the question you present is whether tuition must be paid for the child in the district of his foster home.

I assume for the purpose of this letter that the child has been taken away from his original home and placed in the foster home through legal proceedings. That being the case, the original home or parents have no further jurisdiction over the child, and the child is therefore entitled to school privileges in the district where the foster home is located.

Our supreme court has passed on a similar question in the case of Anderson v. Breithbarth, 62 N.D. 709. In that case, the court held that the phrase "residing in the district" found in the law providing that the public schools of this state "shall be at all times equally free, open and accessible to all children over six years and under twenty-one years of age residing in the district," is not restricted to the domicile of the parents of said child, but the term is to be construed in a broader sense as meaning the actual residence of the child -- the place which constitutes its home when not called elsewhere for temporary purposes,* * *.

In the case to which you refer, the child is legally under the control of the foster home and is entitled to school privileges in the district where the foster home is located.

NELS G. JOHNSON

Attorney General